

# Court of Appeals, State of Michigan

## ORDER

People of MI v Brian Allen Watkins

Docket No. 284366

LC No. 07-003482-FH

Karen M. Fort Hood  
Presiding Judge

Brian K. Zahra

Christopher M. Murray  
Judges

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Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court VACATES the March 14, 2007 judgment of sentence and REMANDS this case for resentencing. Although the failure to complete boot camp presents a substantial and compelling reason for departure, the remaining reasons cited by the trial court were not objective and verifiable. When an appellate court determines that some of the reasons articulated by the sentencing court are substantial and compelling, but some are not, we must determine whether the trial court would have departed to the same degree on the basis of the substantial and compelling reasons alone. See *People v Babcock*, 469 Mich 247, 260; 666 NW2d 231 (2003). Because we are unable to determine from the record that the trial court would have departed to the same degree, we vacate defendant's sentence and remand for resentencing and rearticulation. *Id.* at 260-261; MCL 769.34(11).

We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 11 2008

Date

*Sandra Schultz Mengel*  
Chief Clerk